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Document No. 3198
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 44-96-10 et seq.

61-107.17. Solid Waste Management: Demonstration-of-Need

Synopsis:

This amendment revises section 61-107.17 of R.61-107, Solid Waste Management, expanding the scope of this regulation section by defining needs determination criteria for certain types of solid waste facilities. This includes adding solid waste processing facilities and air curtain incinerators that burn waste other than wood waste and yard trash (under the definition of solid waste incinerators) to the list of facilities requiring a demonstration-of-need. It revises the size of the planning areas around some solid waste facilities, adds new criteria for determining the disposal rate limit for Class Three solid waste landfills, and redefines “noncommercial” and “commercial” solid waste management facilities. These changes will help reduce the number of potential locations for new solid waste facilities and help to reduce and install a cap on the over-all allowable disposal rate in the State while ensuring an adequate number of facilities throughout the State to meet disposal needs.

This amendment updates section 61-107.17 for consistency with the changes approved by the legislature in Document 3113 that amended R.61-107, Solid Waste Management, and took effect by publication in the State Register on May 23, 2008. Document 3113 simultaneously repealed four existing solid waste landfill sections of R.61-107 (107.11; 107.13; 107.16; 107.258) and replaced them with new section 61-107.19, Solid Waste Management: Solid Waste Landfills and Structural Fill. Section 61-107.19 addresses all solid waste landfills and structural fill activities.

Discussion of Revisions:

Statutory Authority. The entire Solid Waste Policy and Management Act replaces specific sections.

Table of Contents. The table was amended pursuant to changes in the text.

Section A. Applicability.

This section was revised to delete outdated names of solid waste facilities and to add new terminology for consistency with section 61-107.19 (State Register Document No. 3113). Also solid waste processing facilities are added to the list of solid waste facilities required to demonstrate need and replaces municipal solid waste and industrial incinerators with solid waste incinerators which includes air curtain incinerators that burn waste other than wood waste and yard trash. Additionally, a requirement was added that any existing facility that requests a change in classification or commercial status is required to demonstrate need. Class Three solid waste landfills permitted to accept only industrial waste, that request approval to accept municipal solid waste, are required to demonstrate need.

Revisions define facilities not regulated under the purview of this regulation.

Names of facilities are changed for consistency with section 61-107.19. The revision states that all facilities other than non-commercial are considered commercial facilities.

Language was added to include air curtain incinerators that receive only wood waste and yard trash to the list of facilities not covered by this regulation.

A new statement was added that facilities other than those listed in Section A.1. are not covered by this regulation.

A new statement was added that processing of waste at source of generation is not covered by this regulation.

A new statement was added that the processing of waste at permitted Class Three solid waste landfills destined for disposal at that landfill do not need demonstration-of-need for the processing portion.

Section A outline was renumbered pursuant to the revisions.

Section B. Definitions.

The name of this section was renamed “Definitions for the Purposes of this Regulation”.

New definitions were added in alphabetical/numerical order for: “Class Two solid waste landfills”, “Class Three solid waste landfills”, “Consistency determination”, “Non-commercial solid waste management facility”, “solid waste incinerators”, and “solid waste processing facility”. The definition for “solid waste disposal facilities” was changed to “solid waste management facilities” and revised as appropriate. The “solid waste incinerator” definition excludes pyrolysis facilities, waste-to-energy facilities burning solid waste used for energy recovery, and air curtain incinerators that burn only wood waste and yard trash. The following definitions were revised: “commercial solid waste management facility”, “Disposal rate”, “Expand”, and “Planning area”. A table of facilities requiring demonstration-of-need under the planning area definition was revised and moved to Section C.4. Stylistic changes were made as appropriate.

Section outline was renumbered appropriately.

Section C. Demonstration of Need Requirements for Solid Waste Disposal Facilities.

Due to numerous revisions, this section was struck and rewritten in its entirety; it was renamed “Demonstration of Need Requirements.”

This section was revised for clarity and to update terminology for consistency with section 61-107.19. Also, a requirement was added that a consistency determination be made prior to issuance of a permit to construct or expand.

A statement that construction cannot begin until a permit is issued was deleted because it is not relevant to this regulation. Terminology in list of facilities needing demonstration-of-need for consistency with section 61-107.19 was revised. Also, the scope was expanded by adding solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills to the list of facilities requiring demonstration-of-need.

Language addressing solid waste generated in other jurisdictions was clarified with the elimination of a double negative.

A statement that demonstration-of-need will be made prior to a consistency determination was deleted. Text defining the size of the planning areas was moved from the definitions section and revised for consistency with section 61-107.19. The planning area for Class Two solid waste landfills (which

includes current C&D landfills) was changed from 10 miles to 20 miles. The scope was expanded to include processing facilities. The terms for “municipal solid waste incinerators” and “industrial incinerators” were combined into new term “solid waste incinerators,” which includes air curtain incinerators that burn waste other than wood waste and yard trash.

New language states that demonstration-of-need requests will be reviewed in the order in which they are received. If consistency request/documentation is not submitted to the Department with the demonstration-of-need request and need is demonstrated, the location for the proposed facility will be reserved for 60 days to allow time for submittal of a consistency determination request.

New language is added that demonstration-of-need determinations made prior to the effective date of regulation will remain valid subject to termination criteria outlined in the regulation.

New text outlines conditions under which the Department can terminate demonstration-of-need determinations. These conditions include: no evidence of diligent pursuit of the appropriate solid waste permit or any related necessary approval within 120 days of the applicants submittal of the demonstration-of-need request, and denial of a permit application. This is added to ensure that an area of the state will not be blocked inappropriately.

Section C outline was renumbered pursuant to the revisions.

D. Determining Need.

This section was struck and rewritten in its entirety; it was renamed “Demonstration-of-Need Application Process”.

Revisions were made for clarity. The list of specific information for the applicant to submit with a demonstration-of-need request was expanded to include the name of the facility, the applicant contact information, the facility type, the host county and the applicant’s signature. The description of allowable methods for submitting site coordinates was also expanded. This section also identifies the center of the property(s) on which the facility is placed as the reference point.

A statement no longer applicable was deleted that disposal facilities that accept only waste generated in the county or region in which the disposal facility is located will not be considered in determining need. A new statement was added that landfills in post-closure will not be considered in determining need.

Criteria for determining maximum yearly disposal rates for Class Three solid waste landfills were changed to reduce the allowable portion to 40 percent of waste generated from counties within the planning radius that host another Class Three solid waste landfill. These criteria are added to help lower the over-all allowable disposal rate in the State.

A reference to “separate ownership” is removed to reduce the possible number of facilities and resulting capacity increase within a planning area.

The clarification was made that in determining the amount of solid waste destined for disposal, the Department would use the figures contained in the previous fiscal year Solid Waste Annual Report.

The Variance section was renumbered and revised as appropriate. Also, the requirement that the applicant must apply for a variance at least five years before exhausting permitted capacity was deleted. This is not

practical. The variance conditions for Class Two and Class Three solid waste landfills were specified. Clarification was made that a variance will not be issued if other applicable requirements are not met.

The section outline was renumbered pursuant to revisions.

E. Violations and Penalties were amended for consistency with other regulations.

F. An Appeals section was added that requires appeal of determinations of need or consistency when the determinations are issued and not as part of an appeal of a decision on the permit. This is to maintain consistency with Document No. 3113.

G. The Severability statement was renumbered from Section F. to Section G.

Instructions: Replace section 107.17 of R.61-107 in entirety with this amendment.

~~Indicates Matter Stricken~~

Indicates New Matter

Text:

61-107.17. Solid Waste Management: Demonstration-of-Need.

(Statutory Authority: 1976 Code Sections 44-96-10 et seq.) ; ~~44-96-260, 44-96-290, and 44-96-450~~)

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- ~~F-G.~~ Severability.

A.Applicability.

1. This regulation establishes the criteria for the demonstration-of-need for the construction of new and the expansion of existing ~~municipal~~municipal commercial Class Two solid waste landfills, ~~municipal~~municipal commercial Class Three solid waste landfills, commercial solid waste incinerators, industrial incinerators, Part IV (long term) construction, demolition, and land clearing debris landfills, and industrial landfills. ~~Solid waste disposal and commercial solid waste processing facilities that have stopped accepting waste prior to process waste destined for disposal at Class Three solid waste landfills. Any solid waste management facility listed herein that no longer has a valid permit to operate prior to the effective date of this regulation and attempts to reopen after the effective date of this regulation shall be considered new facilities~~ a new facility and shall be required to demonstrate need pursuant to this regulation. Any existing facility that requests a change in classification or commercial status shall be considered a new facility and required to demonstrate need pursuant to this regulation. Commercial Class Three solid waste landfills permitted to accept only industrial waste that request approval to accept municipal solid waste shall be

considered a new facility and required to demonstrate need pursuant to Sections C and D of this regulation.

2. This regulation does not apply to: ~~inert or cellulosic solid waste facilities or to industrial facilities managing solid~~

a. Class Two solid waste landfills, Class Three solid waste landfills, solid waste incinerators, or solid waste processing facilities that accept only waste generated in the course of normal operations on property under the same ownership or control as the solid waste management facility if the facility is not classified as a commercial/non-commercial solid waste management facility. 3. This regulation does not apply to facilities All other solid waste management facilities for the purpose of demonstrating need shall be considered commercial facilities;

b. Facilities that handle hazardous waste as defined by the Resource Conservation and Recovery Act (RCRA) and R.61-79, Hazardous Waste Management Regulations, and infectious waste as defined by R.61-105, Infectious Waste Management Regulations;

c. Air curtain incinerators that receive only wood waste and yard trash;

d. Solid waste management facilities other than those listed in Section A.1. above;

e. The processing of waste at the source of generation; and,

f. The processing of waste at permitted Class Three solid waste landfills destined for disposal at the landfill.

B. Definitions for the Purposes of this Regulation.

1. “Class Two solid waste landfills” means those landfills as described in Part IV, Section A of Regulation section 61-107.19. Solid Waste Management: Solid Waste Landfills and Structural Fill.

2. “Class Three solid waste landfills” means those landfills as described in Part V, Subpart A of Regulation section 61-107.19.

3. 1. “Commercial solid waste disposal facility/management facility” means a publicly or privately owned solid waste disposal facility which accepts solid waste from outside the county or region in which the facility is located for the purposes of this regulation, all solid waste management facilities with the exception of non-commercial facilities.

4. 2. “County or Regional Solid Waste Management Plan” means a solid waste management plan prepared, approved, and submitted by either a single county or a region, i.e., a group of counties, pursuant to the Solid Waste Policy and Management Act, S.C. Code Section 44-96-80 (1976, as amended).

5. “Consistency determination” means for the purposes of this regulation, a Department decision that a proposed solid waste project is or is not consistent with:

a. State and County/Region Solid Waste Management Plans;

b. Local zoning and land-use ordinances and regulations based on due consideration of written documentation from an appropriate local government official verifying that applicable local requirements have been met;

c. All other applicable local ordinances; and,

d. Buffer requirements pursuant to the appropriate Department regulation, e.g. Regulation sections 61-107.19, Part IV.B.1.a for Class Two solid waste landfills; 61-107.19, Part V, Subpart B.258.18.a for Class Three solid waste landfills; 61-107.12.E.8 for Solid Waste Incinerators; and 61-107.6.E.8 for Solid Waste Processors.

6. 3-“Department” means the South Carolina Department of Health and Environmental Control.

7. 4-“Disposal ~~Rate~~rate” means the total amount, either by tonnage or volume or rate, of ~~disposal~~waste received at the solid waste disposal facility on a fiscal year (July 1 – June 30) basis.

8. 5-“Expand” or “Expansion” means any increase in the permitted volumetric capacity of an existing solid waste ~~disposal facility, or any increase in the total volume or annual permitted rate of disposal at a~~ solid waste ~~disposal~~management facility.

9. “Non-commercial solid waste management facility” means a facility that manages only solid waste that is generated in the course of normal operations on property under the same ownership or control as the solid waste management facility.

10. 6-“Planning area” means the area around a solid waste ~~disposal~~management facility ~~as defined below which~~that is used for determining the need for new ~~disposal facilities~~and expansions of existing ~~disposal~~facilities pursuant to Section C.4. of this regulation.

a. ~~The following planning areas shall be used by the Department for determining need for commercial facilities:~~

<u>Commercial Solid Waste</u>	<u>Size of Planning Area Around</u>
<u>Disposal Facility</u>	<u>Landfill/Incinerator</u>
Municipal Solid Waste Landfill	75-mile radius
Industrial Landfill	75-mile radius
Municipal Solid Waste Incinerator	75-mile radius
Industrial Incinerator	75-mile radius
Part IV Construction Demolition	10-mile radius
—and Land-clearing debris Landfill	

~~b. The planning area for an existing county or region owned facility that only accepts waste generated within its boundaries shall be limited to the county or region in which the facility is located. The local solid waste management plan will identify a facility as being a county facility or a regional facility. Any new county or region owned facility that is proposing to accept only waste generated within its boundaries shall be subject to the planning area in Section B.6.a.~~

11. 7-“Region” means a group of counties which is planning to or has prepared, approved, and submitted a regional solid waste management plan to the Department pursuant to S.C. Code Section 44-96-80 (1976, as amended).

12. 8-“Solid ~~Waste~~waste” means any garbage, refuse, or sludge from a waste treatment plant, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural

operations, and from community activities. This term does not include solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or ~~by-product~~by-product material as defined by the Atomic Energy Act of 1964, as amended.- Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

~~13.~~ 9. “Solid Waste Disposal Facilities”“Solid waste incinerators” means any engineered device used in the process of controlled combustion of solid waste for the purpose of reducing the volume, and/or reducing or removing the hazardous potential of the waste charged by destroying combustible matter leaving the noncombustible ashes, material and/or residue. For the purposes of this regulation, solid waste pyrolysis facilities, waste-to-energy facilities burning solid waste used for energy recovery, and air curtain incinerators that burn only wood waste and yard trash are not included in this definition.

14. “Solid waste management facilities” means ~~municipal~~Class Two solid waste landfills, ~~municipal~~Class Three solid waste landfills, solid waste incinerators, ~~industrial incinerators, Part IV (long-term) construction, demolition, and land clearing debris landfills, and/or industrial landfills and solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills.~~

~~15.~~ 10.—“State Solid Waste Management Plan” means the plan which the Department of Health and Environmental Control is required to submit to the General Assembly and to the Governor pursuant to S.C. Code Section 44-96-60 (1976, as amended).

16. “Solid waste processing facility” means those facilities as defined in Regulation section 61-107.6, Solid Waste Management: Solid Waste Processing Facilities.

~~C. Demonstration of Need Requirements for Solid Waste Disposal Facilities.~~

~~—1. No permit to construct a new solid waste disposal facility or to expand an existing solid waste disposal facility shall be issued until a demonstration of need is approved by the Department, provided, however, that any increase in the disposal rate shall not require a demonstration of need as long as such disposal rate is less than the maximum disposal rate as determined in paragraph D.3.b. below.~~

~~—2. Construction of new or expansion of existing solid waste disposal facilities may not be commenced until all permits required for construction have been issued.~~

~~—3. Need shall be demonstrated for the following types of solid waste disposal facilities:~~

~~a. Municipal Solid Waste Landfills;~~

~~b. Part IV (long term) Construction, Demolition, and Land Clearing Debris Landfills;~~

~~c. Industrial Landfills;~~

~~d. Municipal Solid Waste Incinerators; and,~~

e. Industrial Solid Waste Incinerators.

4. The initial demonstration of need for a new or expanded solid waste disposal facilities shall be made by the Department prior to a consistency determination. 5. In determining whether there is a need for new solid waste disposal facilities or expansion of existing solid waste disposal facilities, the Department shall not consider solid waste generated in jurisdictions not subject to the provisions of a county or regional solid waste management plan pursuant to S.C. Code Ann. 44-96-80.

C. Demonstration-of-Need Requirements.

1. No permit to construct a new or to expand the volume or capacity of an existing commercial Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility that processes waste destined for disposal at a Class Three solid waste landfill shall be issued until a final demonstration-of-need and a consistency determination are approved by the Department. Any increase in the disposal rate shall not require a demonstration-of-need as long as the requested increase in disposal rate is less than the maximum disposal rate as determined in paragraph D.2 below.

2. Need shall be demonstrated for the following commercial solid waste management facilities:

a. Class Two solid waste landfills;

b. Class Three solid waste landfills;

c. Solid waste incinerators; and,

d. Solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills.

3. In determining whether there is a need for new or expansions of existing solid waste management facilities listed in Section C.2, the Department will consider only solid waste generated in jurisdictions subject to the provisions of a county or regional solid waste management plan pursuant to S.C. Code Section 44-96-80 (1976, as amended).

4. Planning Area. The following planning areas shall be used by the Department for determining if the demonstration-of-need has been met for commercial facilities pursuant to this regulation:

<u>Commercial Solid Waste Management Facility</u>	<u>Size of Planning Area Around Solid Waste Management Facility</u>
<u>Class Two solid waste landfills</u>	<u>20-mile radius</u>
<u>Class Three solid waste landfills</u>	<u>75-mile radius</u>
<u>Solid waste incinerators</u>	<u>75-mile radius</u>
<u>Solid waste processing facilities</u>	<u>75-mile radius</u>

5. Requests for demonstration-of-need will be reviewed by the Department in the order in which they are received. If a request for demonstration-of-need is not accompanied by a request for a consistency determination pursuant to Section B.5 of this regulation, and need is demonstrated, the location for the proposed facility will be reserved for sixty (60) days. Failure to submit a consistency request within sixty

(60) days of submittal of a demonstration-of-need request will result in termination of the reservation of the location for the proposed facility.

6. Demonstration-of-need determinations issued by the Department prior to the effective date of this regulation remain valid. These determinations are subject to termination criteria outlined in Section C.7 below.

7. Demonstration-of-need determinations issued by the Department may be terminated, upon written notification by the Department, if either of the following occurs:

a. Failure to show evidence of diligent pursuit of the appropriate solid waste permit or any related necessary approval, including proof of property control, within one hundred twenty (120) days of the applicants submittal of the demonstration-of-need request; or,

b. The Department denies the permit application.

D.Determining Need.

~~1. For all new proposed solid waste disposal facilities and all proposed expansions of existing solid waste disposal facilities, the applicant shall submit the following information to the Department:~~

~~a. The longitude and latitude coordinates for the site of the proposed new facility or proposed expansion; and,~~

~~b. The proposed disposal rate for the proposed new facility, or for the proposed expansion of the existing facility.~~

~~2. The Department will conduct a review of permitted disposal rates at existing solid waste disposal facilities within the planning area of any new proposed solid waste disposal facilities and any proposed expansions of existing solid waste disposal facilities, based upon information contained in the applicable county or regional solid waste management plan and the State Solid Waste Management Plan for the proposed new solid waste disposal facility/expansion:~~

~~3. In determining if there is a need for a new or expansion of an existing solid waste disposal facility, the Department will use the criteria outlined below:~~

~~a. Where there are at least two (2) commercial disposal facilities under separate ownership within the planning area that meet the disposal needs for the area, e.g., that accept special waste and, if applicable, are capable of handling additional tonnage, no new disposal capacity will be allowed. Disposal facilities that accept only waste generated in the county or region in which the disposal facility is located will not be considered in determining need.~~

~~b. Each disposal facility in the planning area will be allowed up to a maximum yearly disposal rate equal to the total amount of solid waste destined for disposal that is generated in the county or counties that fall, either all inclusive or a portion thereof, within the planning area. Disposal rates for existing facilities shall not be reduced pursuant to this provision.~~

~~c. In determining the amount of solid waste destined for disposal, the Department will use figures in the current Solid Waste Annual Report for the proposed waste stream, e.g., the generation rate for a Part IV construction, demolition debris and land clearing debris landfill will be determined by adding the amounts of construction and demolition debris, and land clearing debris destined for disposal in permitted~~

~~construction, demolition, and land clearing debris landfills in the counties that fall within the planning area.~~

~~d. The Department reserves the right to review additional factors in determining need on a case by case basis.~~

~~4. Variance.~~

~~a. In regards to demonstration of need, any solid waste disposal facility existing on the effective date of this regulation that exhausts its capacity, shall be allowed to either construct a new solid waste disposal facility at its permitted annual rate of disposal as a replacement, or expand the volume of the existing solid waste disposal facility. The planning area shall be determined based on the location of the expansion or replacement facility. This variance applies to all solid waste disposal facilities, including solid waste disposal facilities that accept only waste generated in the county or region in which the facility is located.~~

~~b. A solid waste disposal facility shall apply to the Department for a variance to either replace the solid waste disposal facility or to expand the volume of the existing solid waste disposal facility at least five (5) years before exhausting its permitted capacity or the operational life of the facility.~~

~~5. The Department will advise the applicant and the host county or region in writing of its demonstration of need determination.~~

D. Demonstration-of-Need Application Process.

1. Prior to submitting a permit application to the Department for a new or expansion of an existing Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility that processes waste destined for disposal at a Class Three solid waste landfill, the applicant shall submit to the Department a demonstration-of-need request that includes the following information:

a. The name of the facility. This name will be used in future correspondence to identify the facility;

b. Applicant contact information to include the following:

(1) Name of applicant;

(2) Address;

(3) Telephone number;

(4) Fax number; and,

(5) E-mail address (optional);

c. The geographical coordinates of the facility using the geometric center of the landfill footprint as the reference point, as well as a brief description of the location. For expansions, the reference point shall be the center of the facility as assigned by the Department. Use either latitude/longitude coordinate system in degrees, minutes and seconds (preferred) or the Universal Transverse Mercator (UTM) coordinate system. Describe the method for determining coordinates;

d. The type facility, i.e., Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility;

e. The annual disposal rate or throughput, as applicable, in tons/year (request either the maximum available or specify the desired annual tonnage);

f. The name of the host county/region; and,

g. The applicant's signature.

2. In determining if there is a need for a new or expansion of an existing solid waste management facility, the Department will use the following criteria:

a. Where there are at least two (2) commercial solid waste management facilities within the planning area that meet the disposal needs for the area, e.g., that accept special waste and, if applicable, are capable of handling additional tonnage, no new capacity shall be allowed. Landfills in post-closure shall not be considered in determining need.

b. Each Class Three solid waste landfill in the planning area shall be allowed up to a maximum yearly disposal rate equal to the total amount of solid waste destined for disposal as follows:

(1) One hundred (100) per cent of the host county;

(2) One hundred (100) per cent of each county, other than the host county, that falls within the seventy-five (75) mile radius that does not have a commercial Class Three solid waste landfill located in that county; and,

(3) Forty (40) per cent of each county, other than the host county, that falls within the 75-mile radius that has an existing commercial Class Three landfill.

c. All other solid waste facilities as listed in Section C.2. above shall be allowed a maximum yearly disposal rate equal to the total amount of solid waste destined for disposal that is generated in the county or counties that fall, either all inclusive or a portion thereof, within the planning area.

d. In determining the amount of solid waste destined for disposal, the Department will use figures reflecting the previous fiscal year amount of solid waste as reported in the current Solid Waste Annual Report for the appropriate waste stream.

e. The Department reserves the right to review additional factors in determining need on a case-by-case basis.

f. Disposal rates for existing facilities shall not be reduced pursuant to this provision.

3. Variance in regard to demonstration of need. The Department shall grant a variance to the requirements of D.2.a for Class Two and Class Three solid waste landfills according to the following conditions:

a. An operating Class Two or Class Three landfill shall receive a variance to construct a new Class Two or Class Three landfill at its permitted annual rate of disposal as a replacement facility provided it meets all of the following conditions:

(1) For a Class Three landfill only, the primary business of the landfill since it began operation has been the disposal of “household waste” and “commercial waste” as defined in SC Regulation section 61-107.19.

(2) The landfill has a permit issuance date on or before the effective date of this Regulation.

(3) The landfill exhausts its permitted capacity at its current location (see 3.e. below for timing).

(4) For the purpose of considering the location of a replacement facility under Section D.3.a, location for the replacement facility must be within the facility’s existing planning area, provided that, if the planning area includes a portion of a county, the entire county will be considered to be part of the planning area. A Class Two or Class Three landfill, once replaced as provided for in Section D.3.a, is no longer eligible to receive a variance for replacement under this section.

b. A Class Two or Class Three landfill shall receive a variance to expand the volume of an existing facility if other applicable requirements are met.

c. A facility receiving a variance under this section must also meet the applicable portions of SC Regulation section 61-107.19 prior to receiving a permit.

d. No variance under this section will be granted to a facility that is under a unilateral administrative order issued by the Department until the issues associated with said order have been resolved.

e. An eligible facility shall apply to the Department for a variance to replace or expand the volume of an existing facility prior to exhausting its permitted capacity or the operational life of the facility. A facility shall not operate under an expansion variance and a replacement variance simultaneously, with the exception of a reasonable transition period as determined by the Department. A reasonable transition period is considered to be approximately one hundred eighty (180) calendar days.

4. The Department will advise the applicant and the host county or region in writing of its demonstration-of-need determination. Notice of the Department’s demonstration-of-need determination for Class Two and Three landfills must be given in accordance with SC Regulation section 61-107.19.

E. Violations and Penalties.

A violation of this regulation or violation of any permit, order, or standard subjects the person to the issuance of a Department order or a civil enforcement action in accordance with S.C. Code Ann. Section 44-96-450. Willful violation of this regulation or any permit, order, or standard subjects the person to the issuance of a Department order or to, or a civil or criminal enforcement action in accordance with S.C. Code Ann. Section 44-96-450 (1976, as amended). Any person to whom an order is issued may appeal it as a contested case pursuant to any applicable provision of R.61-72, Procedures for Contested Cases, and the S.C. Administrative Procedures Act, S.C. Code Ann. Section 1-23-310 et seq. In addition, the Department may impose reasonable civil penalties not to exceed ten thousand dollars (\$10,000.00) for each day of violation of the provisions of this regulation, including violation of any order, permit or standard.

F. Appeals.

1. A Demonstration-of-need determination may be appealed at the time such determination is issued and may not be raised as part of an appeal of a decision on the permit.

2. A Department decision involving a demonstration-of-need may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1; and Title 1, Chapter 23.

G.F.-Severability.

Should any section, paragraph, sentence, word, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.

Fiscal Impact Statement:

Staff anticipates there will be no increased costs to the State or its political subdivisions.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF THE REGULATION:

Purpose: This amendment updates, streamlines and clarifies requirements addressing demonstration-of-need and makes this regulation section consistent with the changes in State Register Document No. 3113 that amended R.61-107, Solid Waste Management, effective May 23, 2008. This amendment also revises the size of the planning areas around solid waste facilities, reduces and caps the maximum allowable annual disposal rate, reduces the number of available locations for solid waste disposal facilities, revises certain definitions, and expands the scope of the regulation by defining needs determination criteria for other types of solid waste.

Legal Authority: S.C. Code Sections 44-96-10 et seq.

Plan for Implementation: This amendment will be incorporated into R.61-107, Solid Waste Management, upon approval by the Board of Health and Environmental Control, the General Assembly and publication in the State Register. The amended regulation will be implemented in the same manner in which other regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT:

This amendment is needed for consistency with the changes proposed in State Register Document 3113 that took effect as law on May 23, 2008. Document No. 3113 simultaneously repealed four existing solid waste landfill sections and replaced them with new Section 61-107.19 that addresses all solid waste landfills and structural fill activities. R.61-107.17 must be amended to revised requirements and terminology that coincides with that used in R.61-107.19. This includes requiring appeals on demonstration-of-need in the first phase of the permitting process. This precludes applicants from investing large sums on a project, e.g., drafting plans, until the demonstration-of-need issue is completed. It also allows public notification of a proposed project in the early stages of the permitting process.

This amendment is needed to ensure there are a sufficient number of solid waste management facilities to meet the State's needs without allowing an over abundance in some areas. There are a number of processing facilities and air curtain incinerators that burn waste other than wood waste and yard trash

concentrated in specific areas of the State. Requiring demonstration-of-need for these facilities will ensure these types of facilities are placed in areas of need in the State.

This amendment is needed to help lower and establish a cap on the over-all maximum allowable disposal rate in the State by changing the criteria for demonstrating need for Class Three solid waste landfills. When there are two commercial facilities in a planning area that meet the disposal needs for the area, no new capacity is allowed. The existing regulation does not take into account all the tonnage available in the non-commercial landfills, e.g., many county-owned landfills. Making a distinction between commercial and non-commercial landfills and ignoring the non-commercial landfills when determining need results in an excess of disposal capacity that exceeds the needs of the planning area. Revising the regulation to treat all facilities as “commercial”, with the exception of on-site facilities, will help to lower the over-all allowable disposal rate in the State.

This amendment is reasonable because it helps preserve the State’s natural resources by limiting the number of solid waste facilities, and by lowering and capping the over-all maximum allowable disposal rate in Class Three solid waste landfills while ensuring the availability of adequate long-term disposal capacity to meet the State’s solid waste disposal needs at a reasonable cost. It gives all commercial facilities the same advantages while lowering the over-all allowable disposal rate in the State.

A workgroup comprised of representatives from the solid waste disposal industry (small and large businesses), Association of Counties, solid waste regions, municipalities, environmental groups, environmental consultants, and Department staff developed the criteria on which the amendment is based. All comments received during the public comments periods and during the public hearing before the Department’s Board were considered.

DETERMINATION OF COSTS AND BENEFITS:

Internal Costs: Implementation of this regulation should not require additional resources.

External Benefits: There will be a benefit to the regulated community by requiring demonstration-of-need and appeals on demonstration-of-need in the first phase of the permitting process, in that applicants will not invest large sums on the project (e.g., drafting plans) until the demonstration-of-need issue is completed. There will be a benefit to the public by requiring public notification of proposed solid waste facilities up front. Counting all solid waste management facilities as commercial, except for on-site facilities, will result in more accurate planning within the county/region.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

This amendment adds demonstration-of-need requirements for solid waste processing facilities and air curtain incinerators that burn waste other than wood waste and yard trash. Demonstration-of-need and planning areas ensure fewer, better managed solid waste management facilities are placed throughout the State to ensure that each county has the facilities to meet its needs without an over abundance of similar facilities.

The cap on the overall allowable disposal rate in the State will help protect the State’s natural resources. Demonstration-of-need limits the number of solid waste management facilities which normally results in larger, more efficiently operated facilities.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THIS AMENDMENT IS NOT IMPLEMENTED:

There will be a larger overall allowable disposal rate in the State, which may encourage the importation of waste from other states. If solid waste processing facilities and air curtain incinerators that fall under the purview of this amendment are not required to demonstrate need, there may continue to be a concentration of these facilities in the State and other areas in need of these types of facilities.

Statement of Rationale:

This amendment updates and clarifies requirements addressing demonstration of need. It includes revision of the size of the planning areas around solid waste facilities, it lowers and caps the overall allowable disposal rate in the State, it reduces the number of possible locations available for solid waste management facilities, it expands the scope of the regulation by defining needs determination criteria for other types of solid waste facilities, and other related changes.

Representatives from the solid waste disposal industry (small and large businesses), Association of Counties, solid waste regions, municipalities, environmental group, and environmental consultants worked with Department staff to define the scope of this proposed amendment and develop reasonable criteria while maintaining protection of the environment and public health. See the Statement of Need and Reasonableness above for more information regarding the factors influencing the decision to revise the regulation.